



[10191/3107]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of: Thomas LICH et al. : Examiner: Yonel Beaulieu
For: SYSTEM FOR TRIGGERING :
RESTRAINING MEANS :
Filed: June 20, 2003 : Art Unit: 3661

Serial No.: 10/600,853

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APPEAL BRIEF TRANSMITTAL
(33,865)

SIR:

Accompanying this Appeal Brief Transmittal is an Appeal Brief pursuant to 37 C.F.R. § 41.37 **in triplicate** as a courtesy (even though not required) for filing in the above-identified patent application.

In the above-identified patent application, Appellants mailed a Notice of Appeal on December 29, 2005 (which was filed on January 3, 2006) from the final rejection of claims 1 to 19 contained in the Final Office Action issued by the United States Patent and Trademark Office on September 14, 2005, so that the two-month appeal brief due date is March 3, 2006.

Please charge the appropriate fee of \$500.00, which is the Appeal Brief fee under 37 C.F.R. § 1.17(c), to Deposit Account No. 11-0600. The Commissioner is also authorized, as necessary and/or appropriate, to charge any additional and appropriate fees or credit any overpayment to Deposit Account No. 11-0600. A duplicate copy of this paper is enclosed for this purpose.

Dated: 2/7/2006

Respectfully submitted,

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Date: 2/7/2006
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APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

SIR:

In the above-identified patent application ("the present application"), Appellants mailed a Notice of Appeal on December 29, 2005 (which was filed on January 3, 2006) from the final rejection of claims 1 to 19 contained in the Final Office Action issued by the United States Patent and Trademark Office on September 14, 2005, so that the two-month appeal brief due date is March 3, 2006.

A "Reply Under 37 C.F.R. § 1.116" was filed on November 21, 2005 (and mailed on November 14, 2005).

In accordance with 37 C.F.R. § 41.37, this brief is submitted in support of the appeal of the final rejections of claims 1 to 19. For at least the reasons set forth below, the final rejections of claims 1 to 19 should be reversed.

As to the length of the "concise explanation" of the subject matter defined in each of the claims involved in the appeal (see 41.37), the "concise explanation" language is like the "concise explanation" requirement of former Rule 37 CFR 1.192. Accordingly, the length of the concise explanation provided is therefore acceptable, since it would have been acceptable under 37 CFR 1.192 and since it specifically defines the subject matter of the independent claims involved in the appeal. In the filing of many appeal briefs under the old rule for the present Assignee, the length of the "concise explanation" has always been accepted by the Patent Office.

It is therefore respectfully submitted that this Appeal Brief complies with 37 § C.F.R. 41.37. Although no longer required by the rules, this Brief is submitted in triplicate as a courtesy to the Appeals Board.

It is respectfully submitted that the final rejections of claims 1 to 19 should be reversed for the reasons set forth below.

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1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH, Postfach 30 02 20, 70442 Stuttgart, Federal Republic of Germany. Bosch is the assignee of the entire right, title, and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Bosch, "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal."

3. STATUS OF CLAIMS

Claims 1 to 10, 12, and 14 to 19 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,463,372 (the "Yokota" reference).

Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the "Yokota" reference in view of U.S. Patent No. 6,487,482 (the "Mattes" reference).

Claim 13 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the "Yokota" reference.

Appellants appeal from the final rejections of claims 1 to 19.

A copy of the appealed claims 1 to 19 is attached hereto in the Claims Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action issued on September 14, 2005, Appellants filed a "Reply Under 37 C.F.R. § 1.116" on November 21, 2005 (it was mailed on November 14, 2005). However, the Reply did not contain any amendments.

All Amendments to date have been entered.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present application relates to a system for triggering at least one restraining device. *Specification*, page 3, lines 16 to 18. Fig. 1 shows an example of such a system. *Id.*, page 4, line 12. The system includes a non-pedestrian-impact sensor 1 and a pedestrian-impact sensor 4, which transmit signals to a control device 3 including a processor. *Id.*, page 4, lines 12 to 16, and page 5, lines 21 to 22. In one embodiment, the non-pedestrian-impact sensor 1 includes an acceleration sensor. *Id.*, page 5, line 12. The

control device 3 triggers at least one restraining device 6, such as an airbag or belt tighteners, in a triggering algorithm as a function of an evaluation of the signals received from the sensors 1 and 4. *Id.*, page 5, lines 21 to 27.

In summary, the presently claimed subject matter of claim 1 is to a system for triggering at least one restraining device, the system including: at least one non-pedestrian-impact sensor for transmitting a first signal, at least one pedestrian-impact sensor for transmitting a second signal, and a processor for receiving the first and second signals, the processor being adapted to trigger the at least one restraining device as a function of a combination of the first and second signals, where the at least one non-pedestrian-impact sensor includes an acceleration sensor. (See claim 1).

Claim 2 depends from claim 1 and includes the further features in which the processor determines a crash type and a crash severity from the combination for the triggering of the restraining device. (See claim 2).

Claim 5 depends from claim 1 and includes the further features in which the at least one pedestrian-impact sensor is situated in a rear bumper of a vehicle. (See claim 5).

Claim 6 depends from claim 1 and includes the further features in which the at least one pedestrian-impact sensor is configured as a side-impact sensor. (See claim 6).

Claim 7 depends from claim 1 and includes the further features in which the at least one non-pedestrian-impact sensor is embodied in a control device. (See claim 7).

Claim 10 depends from claim 9 and includes the further features in which the deformation sensor includes a piezo sensor, an optical sensor, a temperature sensor, or a pressure sensor. (See claim 10).

Claim 11 depends from claim 9 and includes the further features in which the acceleration sensor is a micromechanical sensor or a switch. (See claim 11).

Claim 13 depends from claim 6 and includes the further features in which the at least one pedestrian-impact sensor is situated in a trim molding of a vehicle. (See claim 13).

Claim 17 depends from claim 1 and includes the further features in which the at least one pedestrian-impact sensor extends across an entire side of a vehicle. (See claim 17).

Finally, the appealed claims include no means-plus-function language and no step-plus-function claims, so that 41.37(v) is satisfied as to its specific requirements for such claims, since none are present here.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1 to 10, 12, and 14 to 19, which stand rejected under 35 U.S.C. § 102(e), are patentable over the “Yokota” reference.

B. Whether claim 11, which stands rejected under 35 U.S.C. § 103(a), is patentable over the combination of the “Yokota” and “Mattes” references.

C. Whether claim 13, which stands rejected under 35 U.S.C. § 103(a), is patentable over the “Yokota” reference.

7. ARGUMENT

**A. Rejections of Claims 1 to 10, 12, and 14 to 19 Under 35 U.S.C. § 102(e)
Claims 1, 3, 4, 8, 9, 12, 14 to 16, 18, and 19**

Claims 1, 3, 4, 8, 9, 12, 14 to 16, 18, and 19 stand rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate any of claims 1, 3, 4, 8, 9, 12, 14 to 16, 18, and 19 for at least the following reasons.

It is “well settled that the burden of establishing a *prima facie* case of anticipation resides with the [United States] Patent and Trademark Office.” *Ex parte Skinner*, 2 U.S.P.Q.2d 1788, 1788 to 1789 (Bd. Pat. App. & Inter. 1986). To reject a claim under 35 U.S.C. § 102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. *See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). It is respectfully

submitted that the Examiner has not met this standard, for example, as to all of the features of the claims.

Claim 1 relates to a system for triggering at least one restraining device and provides for “at least one pedestrian-impact sensor for transmitting a second signal.” Claim 1 further provides for a processor “adapted to trigger the at least one restraining device as a function of a combination of [a first signal of at least one non-pedestrian-impact sensor] and [the] second signal[.]”

The Final Office Action asserts that the text at column 10, lines 41 to 67 of the “Yokota” reference discloses a pedestrian-impact sensor. The referenced section does not disclose an impact sensor. Instead, the referenced section refers to collision *predicting* sensors that determine a probability of a future collision that may occur. The determination is not based on--and the sensors do not sense--a contact, for example, between a vehicle and an object. The non-contact sensors *do not sense an impact* of any kind. Therefore, they are not impact-sensors. In particular, they are not pedestrian-impact sensors. Indeed, any review of the “Yokota” reference makes plain that it does not identically disclose (or even suggest) a pedestrian-impact sensor for transmitting a signal as a function of which a processor is adapted to trigger a restraining device, as provided for in the context of the claimed subject matter.

Thus, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 1, so that claim 1 is allowable.

Claims 3, 4, 8, 9, 12, 14 to 16, 18, and 19 depend from claim 1 and are therefore allowable for the same reasons as claim 1.

In view of all of the foregoing, reversal of these rejections is respectfully requested.

Claim 2

Claim 2 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 2 for at least the following reasons.

As an initial matter, claim 2 depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 2 provides that “the processor determines a crash type and a crash severity from the combination.” The Final Office Action refers to figs. 4 and 10a-10c as assertedly disclosing these features. However, the referenced figures refer to a degree of danger that a collision will occur. The referenced figures do not identically disclose (or even suggest) a crash severity. In particular, the referenced figures do not disclose (or even suggest) a determination of a crash severity from signals of a pedestrian-impact sensor. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 2, and therefore does not anticipate claim 3, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested for these further reasons.

Claim 5

Claim 5 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 5 for at least the following reasons.

As an initial matter, claim 5 depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 5 provides that “the at least one pedestrian-impact sensor is situated in a rear bumper of a vehicle.” The Final Office Action refers to column 1, lines 36 to 45 as assertedly disclosing these features. However, the referenced section refers to absorption--and not sensing--of an impact. It does not even refer to a pedestrian-impact sensor. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 5, and therefore does not anticipate claim 5, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

Claim 6

Claim 6 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 6 for at least the following reasons.

As an initial matter, claim 6 depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 6 provides that “the at least one pedestrian-impact sensor is configured as a side-impact sensor.” As an initial matter, the Final Office Action only refers to an asserted “peripheral side-impact/non-pedestrian sensor,” and does not refer to any pedestrian-impact sensor. Indeed, any review of the “Yokota” reference makes plain that it does not identically disclose (or even suggest) a pedestrian-impact sensor configured as a side-impact sensor. Further, the Final Office Action refers to fig. 3 and column 10, line 63 as assertedly disclosing a sensor configured as a side-impact sensor. The referenced section refers to an air bag 20 at a portion of a vehicle that is in front of a cabin 3 for preventing deformation from affecting the cabin 3. The referenced section does not identically disclose (or even suggest) a side-impact sensor. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 6, and therefore does not anticipate claim 6, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

Claim 7

Claim 7 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 7 for at least the following reasons.

As an initial matter, claim 7 depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 7 provides that “the at least one non-pedestrian-impact sensor is embodied in a control device.” While the Final Office Action asserts that the “Yokota” reference anticipates claim 7, the Final Office Action does not address this feature. Indeed, it is respectfully submitted that the “Yokota” reference does not identically disclose (or even suggest) this feature. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 7, and therefore does not anticipate claim 7, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

Claim 10

Claim 10 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 10 for at least the following reasons.

As an initial matter, claim 10 ultimately depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 10 provides that a deformation sensor includes “one of a piezo sensor, an optical sensor, a temperature sensor, and a pressure sensor.” The Final Office Action refers to column 7, lines 42 to 50 as assertedly disclosing this feature. However, the referenced section refers to a sensor used for predicting a possible future collision. It does not refer to a deformation sensor. Indeed, it is respectfully submitted that the “Yokota” reference does not identically disclose (or even suggest) this feature. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 10, and therefore does not anticipate claim 10, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

Claim 17

Claim 17 stands rejected under 35 U.S.C. § 102(e) as anticipated by the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not anticipate claim 17 for at least the following reasons.

As an initial matter, claim 17 depends from claim 1 and therefore includes all of the features of claim 1. It is therefore respectfully submitted that the “Yokota” reference does not anticipate this dependent claim for at least the same reasons as those of claim 1.

Furthermore, claim 17 provides that “the at least one pedestrian-impact sensor extends across an entire side of the vehicle.” While the Final Office Action asserts that the “Yokota” reference anticipates claim 17, the Final Office Action does not address this feature. Indeed, it is respectfully submitted that the “Yokota” reference does not identically

disclose (or even suggest) this feature. For this additional reason, the “Yokota” reference does not identically disclose (or even suggest) all of the features of claim 17, and therefore does not anticipate claim 17, which is therefore allowable for these further reasons.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

B. Rejection of Claim 11 Under 35 U.S.C. § 103(a)

Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the “Yokota” reference in view of the “Mattes” reference. It is respectfully submitted that the combination of the “Yokota” and “Mattes” references does not render unpatentable claim 11 for at least the following reasons.

Claim 11 ultimately depends from claim 1 and therefore includes all of the features of claim 1. Since the “Mattes” reference does not cure the critical deficiencies as explained above with respect to the “Yokota” reference, it is respectfully submitted that the combination of the “Yokota” and “Mattes” references does not render unpatentable claim 11 for essentially the same reasons as those of claim 11. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (any dependent claim that depends from a non-obvious independent claim is non-obvious).

As further regards the obviousness rejection, to reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine, supra*. This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 11 provides that “the acceleration sensor is one of a micromechanical sensor and a switch.” The Final Office Action admits that the “Yokota” reference does not disclose this feature, and instead refers to the “Mattes” reference, at column 1, lines 24 to 37, as assertedly disclosing this feature. The referenced section states that “in addition to

acceleration sensors, safety switches (safing or arming sensors) are used” (emphasis added). The referenced section does not disclose or suggest an acceleration sensor that is a micromechanical sensor or a switch, as provided for in the context of the claimed subject matter.

Since the combination of the “Yokota” and “Mattes” references does not disclose or suggest all of the features of claim 11, as explained above, it is respectfully submitted that the combination of the “Yokota” and “Mattes” references does not render unpatentable claim 11, which is therefore allowable.

In view of all of the foregoing, reversal of this rejection is respectfully requested.

C. Rejection of Claim 13 Under 35 U.S.C. § 103(a)

Claim 13 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the “Yokota” reference. It is respectfully submitted that the “Yokota” reference does not render unpatentable claim 13 for at least the following reasons.

Claim 13 depends from claim 6 and therefore includes all of the features of claim 6. It is therefore respectfully submitted that the “Yokota” reference does not render unpatentable claim 13 for essentially the same reasons as those of claim 6. *In re Fine, supra*.

In view of the foregoing, reversal of this rejection is respectfully requested.

CONCLUSION

For at least the reasons explained above, the rejections have been obviated, and claims 1 to 19 are therefore allowable.

Accordingly, reversal of all of the rejections of the Final Office Action is respectfully requested. It is also respectfully requested that the present case be allowed, so that the case may issue.

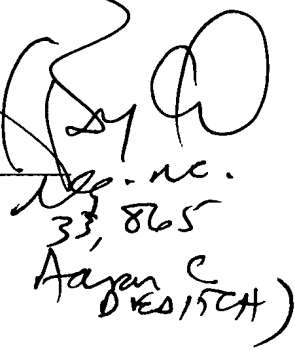
Respectfully submitted,

Dated: 2/1/2006

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CLAIMS APPENDIX

1. A system for triggering at least one restraining device comprising:
at least one non-pedestrian-impact sensor for transmitting a first signal;
at least one pedestrian-impact sensor for transmitting a second signal; and
a processor for receiving the first and second signals, the processor being adapted to trigger the at least one restraining device as a function of a combination of the first and second signals,
the at least one non-pedestrian-impact sensor includes an acceleration sensor.
2. The system according to claim 1, wherein the processor determines a crash type and a crash severity from the combination for the triggering of the restraining device.
3. The system according to claim 1, further comprising at least one of (a) at least one passenger sensor and (b) at least one precrash sensor, wherein the processor, in the triggering of the restraining device, further takes signals from the at least one of (a) and (b) into account.
4. The system according to claim 1, wherein the at least one pedestrian-impact sensor is situated in a front bumper of a vehicle.
5. The system according to claim 1, wherein the at least one pedestrian-impact sensor is situated in a rear bumper of a vehicle.
6. The system according to claim 1, wherein the at least one pedestrian-impact sensor is configured as a side-impact sensor.
7. The system according to claim 1, wherein the at least one non-pedestrian-impact sensor is embodied in a control device.
8. The system according to claim 1, wherein the at least one non-pedestrian-impact sensor includes a peripheral sensor.
9. The system according to claim 1, wherein the at least one non-pedestrian-impact sensor includes a deformation sensor.

10. The system according to claim 9, wherein the deformation sensor includes one of a piezo sensor, an optical sensor, a temperature sensor, and a pressure sensor.

11. The system according to claim 9, wherein the acceleration sensor is one of a micromechanical sensor and a switch.

12. The system according to claim 1, wherein the pedestrian-impact sensor includes at least one of a piezo-foil, a strain gauge, an optical sensor, and a sensor of composite.

13. The system according to claim 6, wherein the at least one pedestrian-impact sensor is situated in a trim molding of a vehicle.

14. The system according to claim 1, wherein the at least one restraining device includes at least one of an airbag and a belt tightener.

15. The system according to claim 1, wherein the processor triggers the at least one restraining device in a gradual manner.

16. The system according to claim 1, wherein the processor triggers a particular one of a plurality of restraining devices based on a passenger weight.

17. The system according to claim 1, wherein the at least one pedestrian-impact sensor extends across an entire side of a vehicle.

18. The system according to claim 3, wherein the at least one precrash sensor includes at least one of an ultrasound sensor, a video sensor, and a radar sensor.

19. The system according to claim 1, wherein the restraining device is a vehicle-occupant restraining device.

EVIDENCE APPENDIX

Appellants have not submitted any evidence pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, and do not rely upon evidence entered by the Examiner.

RELATED PROCEEDINGS APPENDIX

There are no interferences or other appeals related to the present application.